

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

653P0074

HOUSE BILL NO. 1004

Introduced by: Representatives Rounds, Ahlers, Dreyer, Engels, Gilson, Krebs, and Steele
and Senators Hauge and Kloucek at the request of the Department of Labor
Agency Review Committee

1 FOR AN ACT ENTITLED, An Act to revise the style and form of certain provisions and to
2 delete certain obsolete provisions regarding workers' compensation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 62-1-3 be amended to read as follows:

5 62-1-3. As used in this title, ~~unless the context otherwise plainly requires, the term—"~~,
6 employee" ~~shall mean every,~~ means any person, including a minor, in the services of another
7 under any contract of employment, express or implied, (and including as to a deceased
8 employee, ~~his~~ the employee's personal representative, dependents, and other persons to whom
9 compensation may be payable), except:

10 (1) ~~One~~ Any person whose employment is not in the usual course of the trade, business,
11 occupation, or profession of the employer;

12 (2) Any official of the state or of any subdivision of government elected or appointed for
13 a regular term of office or to complete the unexpired portion of any such term;
14 ~~provided that. However,~~ the governing ~~bodies of the various subdivisions~~ body of any



1 subdivision may elect to treat officials of the ~~subdivisions~~ subdivision as employees
2 for the purposes of this section.

3 Any employer performing labor incidental to ~~his~~ the employer's occupation who has elected
4 to proceed under the provisions of § 58-20-3 by purchasing workers' compensation insurance
5 to cover himself or herself, may be deemed to be an employee under this section; ~~provided,~~
6 ~~however, that.~~ However, nothing in this section ~~shall~~ may be construed as to affect that person's
7 rights as an employer for purposes of §§ 62-3-1 and 62-3-2.

8 Section 2. That § 62-1-6 be amended to read as follows:

9 62-1-6. For the purpose of workers' compensation coverage, any conservation ~~officers~~
10 officer while performing any act ordinarily considered a ~~peace~~ law enforcement officer's duty
11 shall be deemed to be acting in the course of ~~their~~ the officer's employment.

12 Section 3. That § 62-2-6 be amended to read as follows:

13 62-2-6. The department ~~shall have power to~~ may subpoena witnesses, administer oaths, and
14 examine such books and records of the parties to a proceeding or investigation as relate to
15 questions in dispute or under investigation. The circuit court may enforce the provisions of this
16 title relating to the attendance and testimony of witnesses and the examination of books and
17 records.

18 Section 4. That § 62-3-1 be amended to read as follows:

19 62-3-1. ~~As to all cases subject to the provisions of this title, the~~ The compensation provided
20 by this title ~~shall be~~ is the measure of responsibility which the employer has assumed for injuries
21 to or death of any employee.

22 Section 5. That § 62-3-2 be amended to read as follows:

23 62-3-2. The rights and remedies ~~herein~~ granted to an employee subject to this title, on
24 account of personal injury or death arising out of and in the course of employment, shall exclude

1 all other rights and remedies of ~~such the~~ employee, ~~his the employee's~~ personal representatives,
2 dependents, or next of kin, on account of such injury or death against ~~his the~~ employer or any
3 employee, partner, officer, or director of ~~such the~~ employer, except rights and remedies arising
4 from intentional tort.

5 Section 6. That § 62-3-4 be amended to read as follows:

6 62-3-4. Other than chapter 62-6, this title ~~shall~~ does not apply to ~~employees~~ any employee
7 engaged in interstate or foreign commerce, or to ~~their employers~~ any such employee's employer,
8 in any case where the laws of the United States provide for compensation, or for liability for
9 injury or death by accident of ~~such employees~~ the employee.

10 Section 7. That § 62-3-5 be amended to read as follows:

11 62-3-5. No employer other than the state, a municipality, or other political subdivision of
12 this state ~~shall~~ may be deemed to have accepted the provisions of this title unless ~~he the~~
13 employer has complied with the provisions of §§ 62-5-1 to 62-5-5, inclusive.

14 Section 8. That § 62-3-5.1 be amended to read as follows:

15 62-3-5.1. Section 62-3-3 ~~shall~~ does not apply to an executive officer of a corporation who,
16 at the time of ~~his the officer's~~ election or appointment, or more than thirty days prior to ~~his the~~
17 officer's injury or death or, in the case of ~~the South Dakota Occupational Disease Disability Law~~
18 chapter 62-8, thirty days prior to contracting or incurring any occupational disease, serves upon
19 the corporation, personally or by certified mail, written notice of election to reject the provisions
20 of this title. ~~Such~~ The rejection may be withdrawn by ~~such the~~ officer by serving a written notice
21 in the same manner upon the corporation more than thirty days prior to ~~his the officer's~~ injury
22 or death or, in the case of ~~the South Dakota Occupational Disease Disability Law~~ chapter 62-8,
23 thirty days prior to contracting or incurring any occupational disease.

24 Section 9. That § 62-3-10 be amended to read as follows:

62-3-10. A principal, intermediate, or subcontractor ~~shall be~~ is liable for compensation to any employee injured while in the employ of any ~~one of his subcontractors~~ subcontractor and engaged upon the subject matter of the contract, to the same extent as the immediate employer. Any principal, intermediate, or subcontractor who ~~shall pay~~ pays compensation under the provisions of this section may recover the amount paid from any person, who, independently of this section, would have been liable to pay compensation to the injured employee. ~~Every~~ Each claim for compensation under this section shall in the first instance be presented to and instituted against the immediate employer, but such proceeding ~~shall~~ does not constitute a waiver of the employee's rights to recover compensation under this title from the principal or intermediate contractor, ~~but, However,~~ the collection of full compensation from one employer ~~shall bar~~ bars recovery by the employee against any others, ~~and he shall.~~ The employee may not collect from all a total compensation in excess of the amount for which any ~~of such contractors~~ contractor is liable. This section ~~shall apply~~ applies only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under ~~his~~ the contractor's control or management.

Section 10. That § 62-3-11 be amended to read as follows:

62-3-11. Any employee, who is employed by an employer who is deemed not to operate under this title in accordance with § 62-5-7, or the dependents of such deceased employee, may elect to proceed against the employer in any action at law to recover damages for personal injury or death; or may elect to proceed against the employer in circuit court under the provisions of this title, as if the employer had elected to operate thereunder by complying with §§ 62-5-1 to 62-5-5, inclusive, ~~and the.~~ The measure of benefits shall be that provided by § 62-4-1 plus twice the amount of other compensation allowable under this title; ~~provided that such.~~ However, no employee ~~or his dependents shall not~~ nor any dependent of the employee may recover from both

actions.

Section 11. That § 62-3-13 be amended to read as follows:

62-3-13. Nothing in this title ~~shall~~ may be construed to relieve any employer or employee from any penalty imposed for failure or neglect to perform any statutory duty in connection with such employment.

Section 12. That § 62-3-16 be amended to read as follows:

62-3-16. The provisions of this title, not inconsistent with the provisions of this section, ~~are extended and shall~~ apply to the business of operating threshing machines, grain combines, corn shellers, cornhuskers, shredders, silage cutters, and seed hullers for profit, but ~~shall~~ do not apply to the operation of any thereof by the owner thereof for the threshing, combining, corn shelling, cornhusking, shredding, silage cutting, or seed hulling of ~~his own~~ the owner's grain crops, nor to any operations in the nature of exchange of work between farmers, nor to persons who are not generally engaged in the operation of such machines for commercial purposes. Before any person engaging in such business, and being under the provisions of this title, shall operate any such machine, ~~he~~ the person shall secure ~~his~~ liability under this title as provided in §§ 62-5-1 to 62-5-5, inclusive. ~~All contracts~~ Any contract by any such person for threshing or combining of any grain, corn shelling, cornhusking, shredding, silage cutting, and seed hulling by machinery without first having procured and filed such policy or such certificate, ~~shall be~~ is null and void, and no compensation ~~shall be~~ is recoverable ~~thereunder~~ under the contract.

Section 13. That § 62-3-17 be amended to read as follows:

62-3-17. As to any ~~employees~~ employee excepted under § 62-3-15, the employer may place himself or herself under the provisions of this title by voluntarily insuring his or her liability as provided in §§ 62-5-1 to 62-5-5, inclusive.

Section 14. That § 62-3-18 be amended to read as follows:

62-3-18. No contract or agreement, express or implied, no rule, regulation, or other device, ~~shall~~ may in any manner operate to relieve any employer in whole or in part of any obligation created by this title except as ~~herein~~ provided by this title.

Section 15. That § 62-4-8 be amended to read as follows:

62-4-8. In case death occurs as a result of the injury, then ~~in case~~ if the employee leaves any spouse, child ~~or children, parents, grandparents, or other~~, parent, grandparent, or lineal heirs ~~heirs~~ heir entitled to compensation under §§ 62-4-12 to 62-4-15, inclusive, ~~said~~ the compensation shall be paid at the option of the employer, either to the personal representative or the beneficiaries of the deceased employee and distributed as provided in § 62-4-17, ~~but~~ However, in no case ~~shall~~ may the amount payable under this section be less than five hundred dollars.

Section 16. That § 62-4-10 be amended to read as follows:

62-4-10. All compensation provided for in §§ 62-4-3 to 62-4-7, inclusive, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the injury, ~~or~~ However, if this ~~shall~~ is not ~~be~~ feasible, then the installments shall be paid weekly.

Section 17. That § 62-4-11 be amended to read as follows:

62-4-11. ~~In any case where~~ If an employee receives an injury for which a specific schedule of payments is provided by § 62-4-6; and the employee thereafter dies from causes other than the injury before the full payment of all installments due for ~~said~~ the specific injury have been paid to the employee, the employer shall pay the balance due under the specific schedule of payments as provided in § 62-4-6, to ~~said~~ the employee's dependents as provided in §§ 62-4-12 to 62-4-22, inclusive.

Section 18. That § 62-4-14 be amended to read as follows:

62-4-14. The amount of compensation which shall be paid for an injury to the employee

1 resulting in death, if no amount is payable under § 62-4-12, and the employee leaves any parent,
2 grandparent, or minor ~~brothers, or minor sisters~~ sibling, who were dependent upon ~~him~~ the
3 employee for support at the time of ~~his~~ the employee's injury, shall be such a percentage of the
4 sum provided in § 62-4-12 as the average annual contributions which the deceased made to the
5 support of ~~such~~ the parent, grandparent, or minor ~~brothers, or minor sisters~~ sibling during two
6 years preceding the injury bear to ~~his~~ the employee's earnings during ~~such~~ the two years.

7 Section 19. That § 62-4-15 be amended to read as follows:

8 62-4-15. The amount of compensation which shall be paid for an injury to the employee
9 resulting in death, if no amount is payable under § 62-4-12 or 62-4-14, and the employee leaves
10 collateral heirs dependent at the time of the injury to the employee upon ~~his~~ the employee's
11 earnings, shall be such a percentage of the sum provided in § 62-4-12 as the average annual
12 contributions which the deceased made to the support of ~~such~~ the collateral dependent heirs
13 during two years preceding the injury bear to ~~his~~ the employee's earnings during ~~such~~ the two
14 years.

15 Section 20. That § 62-4-17 be amended to read as follows:

16 62-4-17. ~~At~~ The compensation, except for additional benefits for children under eighteen
17 years of age, provided for in §§ 62-4-12 to 62-4-15, inclusive, to be paid in case injury results
18 in death, shall be paid in installments equal to two-thirds of the average earnings, at the same
19 intervals at which the wages or earnings of the employee were paid, at which time the additional
20 benefits for children under eighteen years of age shall also be paid; ~~or~~ However, if this ~~shall~~ is
21 not ~~be~~ feasible, then the installments shall be paid weekly.

22 Section 21. That § 62-4-18 be amended to read as follows:

23 62-4-18. The compensation to be paid for injury which results in death, as provided in
24 §§ 62-4-12 to 62-4-22, inclusive, shall be paid at the option of the employer either to the

1 personal representative of the deceased employee or to ~~his~~ the employee's beneficiaries, and
2 shall be distributed to the heirs who formed the basis for determining the amount of
3 compensation to be paid by the employer, the distributees' share to be in proportion of their
4 respective dependency at the time of the injury on the earnings of the decedent. In the judgment
5 of the court appointing the personal representative, a child's distributive share may be directed
6 paid to the parent for the support of the child.

7 Section 22. That § 62-4-19 be amended to read as follows:

8 62-4-19. The payment of compensation by the employer to the personal representative of
9 the deceased employee pursuant to § 62-4-18 shall relieve ~~him~~ the employer of all obligation
10 as to the distribution of ~~such~~ the compensation and payment by ~~the~~ the personal representative
11 shall make payment to the distributees ~~shall be made~~ pursuant to the order of the court making
12 the appointment.

13 Section 23. That § 62-4-20 be amended to read as follows:

14 62-4-20. With the consent and approval of the secretary of labor, an employer may pay to
15 the surviving spouse of a deceased, the compensation payable to ~~such~~ the spouse and the minor
16 children of the deceased under §§ 62-4-12 and 62-4-13 without the necessity of the appointment
17 of a conservator for ~~such~~ the minor children. The payment of ~~such~~ the compensation by the
18 employer shall relieve ~~him~~ the employer of all obligation as to the distribution of ~~such~~ the
19 compensation so paid. Except in those cases where a lump-sum settlement has been made,
20 approval by the secretary may at any time be revoked or modified for cause.

21 Section 24. That § 62-4-21 be amended to read as follows:

22 62-4-21. No compensation ~~shall be~~ is payable under §§ 62-4-12 to 62-4-22, inclusive, to the
23 surviving spouse of a deceased employee unless that spouse was, at the time of the death, living
24 with the deceased employee, or was then dependent upon the deceased employee for support,

1 or was then living apart from the deceased employee for justifiable cause or because of desertion
2 by the deceased employee.

3 Section 25. That § 62-4-24 be amended to read as follows:

4 62-4-24. As to an employee in an employment in which it is the custom to operate
5 throughout the working days of the year, and who was in the employment of the same employer
6 in the same grade of employment as at the time of the injury continuously for fifty-two weeks
7 next preceding the injury, except for any temporary loss of time, the average weekly wage shall,
8 where feasible, be computed by dividing by fifty-two the total earnings of ~~such~~ the employee
9 as defined in subdivision 62-1-1(6), during ~~such~~ the period of fifty-two weeks; ~~but if such,~~
10 However, if the employee lost more than seven consecutive days during ~~such~~ the period of
11 fifty-two weeks, then the division shall be by the number of weeks and fractions thereof that ~~he~~
12 the employee actually worked.

13 Section 26. That § 62-4-25 be amended to read as follows:

14 62-4-25. As to an employee in an employment in which it is the custom to operate
15 throughout the working days of the year, but who is not covered by § 62-4-24, the average
16 weekly wages shall, where feasible, be ascertained by computing the total of ~~his~~ the employee's
17 earnings during the period ~~he~~ the employee worked immediately preceding ~~his~~ the employee's
18 injury at the same grade of employment for the employer by whom ~~he~~ the employee was
19 employed at the time of ~~his~~ the employee's injury, and dividing such total by the number of
20 weeks and fractions thereof that ~~he~~ the employee actually worked; ~~except that where,~~ However,
21 if such method of computation produces a result that is manifestly unfair and inequitable; or
22 ~~where~~ if by reason of the shortness of time during which the employee has been in such
23 employment, or the casual nature or terms of the employment, it is impracticable to use such
24 method, then regard shall be had to the average weekly amount which during fifty-two weeks

1 previous to the injury was being earned by a person in the same grade, employed at the same
2 work, by the same employer, or if there is no person so employed, by a person in the same
3 grade, employed in the same class of employment in the same general locality.

4 Section 27. That § 62-4-29 be amended to read as follows:

5 62-4-29. As to an employee who before the accident for which ~~he~~ the employee claims
6 compensation was disabled and drawing compensation under the terms of this title, the
7 compensation for each subsequent injury shall be apportioned according to the proportion of
8 incapacity and disability caused by the respective injuries which ~~he~~ the employee may have
9 suffered.

10 Section 28. That § 62-4-31 be amended to read as follows:

11 62-4-31. ~~A~~ The term, working week, for the purposes of §§ 62-4-24 to 62-4-30, inclusive,
12 ~~shall be deemed to be~~ means the number of days contemplated by the employment to be worked
13 by the employee during each calendar week.

14 Section 29. That § 62-4-33 be repealed.

15 ~~62-4-33. Sections 3-12A-33 to 3-12A-35, inclusive, do not apply to the State Cement Plant~~
16 ~~Commission. The commission shall pay claims from funds available for the maintenance of the~~
17 ~~commission, or may procure insurance as provided in §§ 62-5-2 and 62-5-3.~~

18 Section 30. That § 62-4-37 be amended to read as follows:

19 62-4-37. No compensation ~~shall~~ may be allowed for any injury or death due to the
20 employee's willful misconduct, including intentional self-inflicted injury, intoxication, illegal
21 use of any schedule I or schedule II drug, or willful failure or refusal to use a safety appliance
22 furnished by the employer, or to perform a duty required by statute. The burden of proof under
23 this section ~~shall be~~ is on the defendant employer.

24 Section 31. That § 62-4-40 be amended to read as follows:

1 62-4-40. If compensation is awarded under this title, the employer having paid the
2 compensation, or having become liable therefor may collect in ~~his~~ the employer's own name or
3 that of the injured employee, or ~~his~~ the employer's personal representative, if deceased, from any
4 other person against whom legal liability for damage exists, the amount of ~~such~~ the liability ~~and~~.
5 The employer shall hold for the benefit of the injured employee or ~~his~~ the employee's personal
6 representative, if deceased, the amount of damages collected in excess of the amount of
7 compensation paid ~~such~~ the employee or ~~his~~ the employee's representative, less the
8 proportionate necessary and reasonable expense of collecting the same, which expenses may
9 include an attorney's fee not in excess of thirty-five percent of damages so collected, and shall
10 be subject finally to the approval of the department.

11 Section 32. That § 62-4-43 be amended to read as follows:

12 62-4-43. The employee may make the initial selection of ~~his~~ the employee's medical
13 practitioner or surgeon from among all licensed medical practitioners or surgeons in the state.
14 The employee shall, prior to treatment, notify the employer of ~~his~~ the choice of medical
15 practitioner or surgeon or as soon as reasonably possible after treatment has been provided. The
16 medical practitioner or surgeon selected may arrange for any consultation, referral, or
17 extraordinary or other specialized medical services as the nature of the injury shall require. The
18 employer is not responsible for medical services furnished or ordered by any medical
19 practitioner or surgeon or other person selected by the employee in disregard of this section. If
20 the employee is unable to make ~~such~~ the selection, the selection requirements of this section
21 ~~shall do~~ not apply as long as the inability to make a selection persists. If the injured employee
22 unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment, the
23 employer is not liable for an aggravation of ~~such~~ the injury due to ~~such~~ the refusal and neglect
24 and the Department of Labor may suspend, reduce, or limit the compensation otherwise payable.

1 If the employee desires to change ~~his~~ the employee's choice of medical practitioner or surgeon,
2 the employee shall obtain approval in writing from the employer. An employee may seek a
3 second opinion without the employer's approval at the employee's expense.

4 Section 33. That § 62-4-44 be amended to read as follows:

5 62-4-44. A medical practitioner or surgeon first treating an employee shall furnish a report
6 of the injury and treatment to the employer and the Department of Labor within fourteen days
7 following the first treatment. The Department of Labor may excuse the failure to furnish the
8 report within fourteen days if it finds it to be in the interest of justice to do so. Thereafter, if the
9 employee needs continued medical care or claims to be disabled from ~~his~~ employment, the
10 medical practitioner or surgeon shall provide status reports to the employer and the Department
11 of Labor at no less than thirty-day intervals, ~~provided that. However,~~ no report ~~shall be~~ is
12 required if the medical practitioner or surgeon has not seen the employee since ~~his~~ the
13 practitioner's or surgeon's last report.

14 Section 34. That § 62-4-46 be amended to read as follows:

15 62-4-46. A false representation as to physical condition or health made by an employee in
16 procuring employment shall preclude the awarding of workers' compensation benefits for an
17 otherwise compensable injury if it is shown that the employee intentionally and willfully made
18 a false representation as to ~~his~~ the employee's physical condition, the employer substantially and
19 justifiably relied on the false representation in the hiring of the employee, and a causal
20 connection existed between the false representation and the injury. The burden is on the
21 employer to prove each of these elements.

22 Section 35. That § 62-5-2 be amended to read as follows:

23 62-5-2. An employer may secure the payment of compensation to ~~his employees~~ any
24 employee by insuring and keeping insured the payment of ~~such~~ the compensation with any stock

1 corporation writing workers' compensation insurance or any mutual employer's liability
2 association authorized to transact the business of workers' compensation insurance in this state
3 or in an association authorized to exchange reciprocal or interinsurance contracts by individuals,
4 partnerships, or corporations.

5 Section 36. That § 62-5-3 be amended to read as follows:

6 62-5-3. An employer may secure the payment of compensation to ~~his employees~~ any
7 employee by insuring and keeping insured the payment of ~~such the~~ compensation in some
8 association organized for the exchange of reciprocal or interinsurance contracts with each other
9 by individuals, partnerships, or corporations of this state for the purpose of providing indemnity
10 among themselves from any loss under the workers' compensation law, if ~~such the~~ association
11 is authorized to do the business of entering into reciprocal or interinsurance contracts by the
12 director of the Division of Insurance. Nothing in this section ~~shall apply~~ applies to reciprocal
13 or interinsurance exchanges ~~now or hereafter~~ authorized to do business under the provisions of
14 chapter 58-34.

15 Section 37. That § 62-5-8 be amended to read as follows:

16 62-5-8. No insurer of any obligation under this title ~~shall~~ may by himself, herself, or through
17 another, either directly or indirectly, charge, accept, or pay as a commission or compensation
18 for placing or renewing any insurance under this title more than fifteen percent of the premium
19 charged.

20 Section 38. That § 62-5-9 be amended to read as follows:

21 62-5-9. ~~Whenever~~ If any insurance company operating under this chapter ~~shall issue~~ issues
22 a policy of workers' compensation insurance to any employer, the company writing ~~such the~~
23 insurance shall file a certificate thereof with the department.

24 Section 39. That § 62-5-18 be amended to read as follows:

1 62-5-18. Any employer may agree, as a condition of ~~his~~ the employer's contract for the
2 insurance of compensation and benefits as provided in Title 62, to pay an amount specified in
3 the contract per claim toward the total amount of any claim payable under workers'
4 compensation. The amount of premium to be paid by an employer who selects a policy with a
5 deductible shall be reduced based upon a rating schedule or rating plan filed with and approved
6 by the director of insurance. Administration of claims shall remain with the insurer as provided
7 in the terms and conditions of its policy.

8 Section 40. That § 62-6-5 be amended to read as follows:

9 62-6-5. Information obtained within the contemplation of this title shall be used for no other
10 purpose than for the information of the department or insurance company with reference to the
11 duties imposed upon ~~such~~ the department. However, the department may release information
12 to an injured employee or ~~his~~ the employee's attorney, to a social security or welfare office
13 having a claim by the employee, or to any state or federal agency which rehabilitates
14 ~~handicapped persons; and the~~ with disabilities. The department may issue statistical information
15 ~~where~~ if individual claimants are not identified.

16 Section 41. That § 62-6-6 be amended to read as follows:

17 62-6-6. A refusal on the part of the employer to submit ~~his~~ the employer's books, records,
18 or payrolls for the inspection of the department, or its authorized representative presenting
19 written authority from the department, ~~shall subject~~ subjects the employer to a penalty of
20 twenty-five dollars for each offense, to be collected by a civil action in the name of the state and
21 paid into the state treasury.

22 Section 42. That § 62-7-1 be amended to read as follows:

23 62-7-1. An employee entitled to receive disability payments shall ~~be required~~, if requested
24 by the employer, ~~to~~ submit himself or herself at the expense of the employer for examination

1 to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place
2 reasonably convenient for the employee, as soon as practicable after the injury, and also one
3 week after the first examination, and thereafter at intervals not oftener than once every four
4 weeks,~~which.~~ The examination shall be for the purpose of determining the nature, extent, and
5 probable duration of the injury received by the employee, and for the purpose of ascertaining
6 the amount of compensation which may be due the employee from time to time for disability
7 according to the provisions of this title.

8 Section 43. That § 62-7-2 be amended to read as follows:

9 62-7-2. The examination provided by § 62-7-1 shall be made in the presence of a duly
10 qualified medical practitioner or surgeon employed and paid for by the employee, if ~~such~~ the
11 employee so desires. ~~In all cases where~~ If the examination is made by a surgeon engaged by the
12 employer and the injured employee has no surgeon present at ~~such~~ the examination, ~~it shall be~~
13 ~~the duty of~~ the surgeon making the examination at the instance of the employer to shall deliver
14 to the injured employee, upon ~~his~~ the employee's request or that of ~~his~~ the employee's
15 representative, a statement in writing of the condition and extent of the injury to the same extent
16 that ~~such~~ the surgeon reports to the employer.

17 Section 44. That § 62-7-3 be amended to read as follows:

18 62-7-3. If the employee refuses to submit himself or herself to examination pursuant to § 62-
19 7-1 or unnecessarily obstructs the ~~same, his~~ examination, the employee's right to compensation
20 payments shall be temporarily suspended until ~~such~~ the examination ~~shall have taken~~ takes
21 place, ~~and no.~~ No compensation ~~shall be~~ is payable under this title for such period.

22 Section 45. That § 62-7-12 be amended to read as follows:

23 62-7-12. If the employer and injured employee or ~~his~~ the employee's representative or
24 dependents fail to reach an agreement in regard to compensation under this title, either party

1 may notify the Department of Labor and request a hearing according to rules promulgated
2 pursuant to chapter 1-26 by the secretary of labor. The department shall fix a time and place for
3 the hearing and shall notify the parties.

4 Section 46. That § 62-7-16 be amended to read as follows:

5 62-7-16. Any party to proceedings before the department may within ten days after service
6 upon ~~him~~ the party of a decision of the department, as provided in § 62-7-13, file with the
7 department a petition for a review of ~~such~~ the decision. Upon the filing of ~~such~~ the petition the
8 secretary may ~~in his discretion~~ either deny ~~such~~ the petition or direct that further hearing be had
9 or additional evidence received, ~~and in.~~ In the event of ~~such~~ the further hearing or of the receipt
10 of additional evidence ~~he,~~ the secretary may revise his or her decision in whole or in part or
11 affirm the same. Notice of denial of ~~such~~ the petition or any other order thereon shall be given
12 as provided in § 62-7-13.

13 Section 47. That § 62-7-18 be amended to read as follows:

14 62-7-18. If a petition for a review is filed as provided in § 62-7-16, it ~~shall~~ may not be
15 deemed that the department has made a final decision until there is a final determination on ~~such~~
16 the petition, ~~and such.~~ The final determination shall in that event be deemed the final decision
17 of the department and subject to appeal.

18 Section 48. That § 62-7-30 be amended to read as follows:

19 62-7-30. All notices or orders provided for in this chapter may be served personally or by
20 registered or certified mail. ~~When~~ If served by registered or certified mail, proof by affidavit
21 thereof ~~must~~ shall be accompanied by post office return receipt. ~~When~~ If, however, any party
22 is represented by an attorney, ~~such~~ the service ~~must~~ shall be made on ~~such~~ the attorney, and may
23 be made either in the manner provided in this section, or in the manner provided by § 15-6-5.

24 Section 49. That § 62-7-35.2 be amended to read as follows:

62-7-35.2. The provisions of §§ 62-7-35 and 62-7-35.1 do not apply to a ~~mentally ill~~ person with a mental illness, mentally retarded a person with a developmental disability, or a minor if the person has no guardian or legal representative. The limitations of §§ 62-7-35 and 62-7-35.1 do apply to the ~~mentally ill~~ person with a mental illness, mentally retarded person with a developmental disability, or minor from the date of the appointment of a guardian or legal representative for that person, and if no guardian or legal representative has been appointed, to a minor upon obtainment of majority.

Section 50. That § 62-8-1 be amended to read as follows:

62-8-1. ~~Wherever~~ Terms used in this chapter mean:

- (1) "Compensation," ~~means~~ the payments and benefits provided for in the South Dakota workers' compensation law, subject to the conditions and limitations contained in this chapter;
- (2) "Department," ~~means~~ the Department of Labor of the State of South Dakota;
- (3) "Disablement," ~~means~~ the event of an employee's becoming actually and totally incapacitated, because of an occupational disease as defined in this chapter, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease. ~~"Disability,"~~ The terms, disability, disabled," "total disability," "totally disabled", or "total disablement" shall be are synonymous with "disablement";
- (4) "Injurious exposure" and "harmful quantities," ~~where used in this chapter shall be construed as synonymous terms and shall mean~~ that concentration of toxic material which would, independently of any other cause whatsoever (including the previous physical condition of the claimant) produce or cause the disease for which claim is made;

(5) "Nondisabling silicosis," ~~means~~ silicosis demonstrable by X ray examinations of the lungs, which reveal unquestionably the characteristic mottling of silicosis in the lung fields, occurring in an employee after injurious exposure to silicon dioxide for the period provided in § 62-8-14, but not sufficient to disable ~~such the~~ employee from performing ~~his~~ usual work;

(6) "Occupational disease," ~~means~~ a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment and includes any disease due or attributable to exposure to or contact with any radioactive material by an employee in the course of ~~his~~ employment;

(7) "Silicosis," ~~means~~ the characteristic fibrotic condition of the lungs caused by the inhalation of silicon dioxide (SiO₂) dust.

Section 51. That § 62-8-3 be amended to read as follows:

62-8-3. The terms "~~contracted~~" and "~~incurred~~," as used in this chapter when referring to an occupational disease, ~~shall be deemed~~ are the equivalent of the phrase "~~arising out of and in the course of~~," as used in the workers' compensation law.

Section 52. That § 62-8-4 be amended to read as follows:

62-8-4. ~~Where~~ If an employee of an employer subject to this chapter suffers from an occupational disease as defined in § 62-8-1, and is thereby disabled from performing ~~his~~ work in the last occupation in which ~~he~~ the employee was injuriously exposed to the hazards of ~~such~~ the disease, or dies as a result of ~~such the~~ disease, and the disease was due to the nature of an occupation or process in which ~~he~~ the employee was employed within the period previous to ~~his~~ the employee's disablement limited in this chapter, the employee, or, in case of ~~his~~ the employee's death, ~~his the employee's~~ dependents, ~~shall be~~ are entitled to compensation as provided in the workers' compensation law, as if ~~such the~~ disablement or death were an injury

1 by accident, except as otherwise provided in this chapter; ~~and the~~. The practice and procedure
2 prescribed in the workers' compensation law shall apply to proceedings for compensation for
3 such diseases, except as in this chapter otherwise provided.

4 Section 53. That § 62-8-5 be repealed.

5 ~~62-8-5. The provisions of this chapter shall apply only to cases of occupational disease in~~
6 ~~which the last injurious exposure in an occupation subject to the hazards of such disease~~
7 ~~occurred on or after July 1, 1947.~~

8 Section 54. That § 62-8-6 be amended to read as follows:

9 62-8-6. Every employer of workers subject to the workers' compensation law is subject to
10 the provisions of this chapter; and shall secure the payment of compensation in accordance with
11 the provisions of this chapter by any method prescribed by the workers' compensation law at the
12 time in effect in this state. If the foregoing requirement is complied with, the liability of the
13 employer under this chapter is exclusive and in place of any other civil liability, at common law
14 or otherwise to such employee, or to ~~his~~ the employee's spouse, children, parents, dependents,
15 next of kin, personal representatives, guardian, conservator, or any others on account of any
16 disease or injury to health, or on account of death from any disease or injury to health in any
17 way contracted, sustained, aggravated, or incurred by ~~such~~ the employee in the course of, or
18 because of, or arising out of ~~his~~ employment, except only an injury compensable as an injury
19 by accident under the provisions of the workers' compensation law.

20 Section 55. That § 62-8-13 be amended to read as follows:

21 62-8-13. An employer ~~shall~~ is not be liable for compensation or other benefits under the
22 provisions of this chapter for disability or death unless notice of disability and claim for
23 compensation has been given and made to the employer in writing within the time fixed in
24 §§ 62-8-29 to 62-8-32, inclusive.

Section 56. That § 62-8-14 be amended to read as follows:

62-8-14. No claim for disability or death from silicosis ~~shall~~ may be maintained or prosecuted otherwise than under the provisions of this chapter, or come within the provisions of this chapter, unless the employee has been injuriously exposed to the inhalation of silica dust over a period of not less than two years, ~~which shall have~~ and has been in this state, under a contract of employment existing in this state ~~provided, however, that~~. However, if the employee ~~shall have~~ has been employed by the same employer during the whole of ~~such~~ the two-year period, ~~his~~ the employee's right to compensation against ~~such~~ the employer ~~shall~~ is not be affected by the fact that ~~he~~ the employee had been employed during any part of ~~such~~ the period outside of this state.

Section 57. That § 62-8-15 be amended to read as follows:

62-8-15. ~~Where~~ If compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of ~~such~~ the disease ~~shall be~~ is liable therefor; ~~the~~. The amount of the compensation shall be based upon the average weekly wages (as defined in the workers' compensation law) of the employee when last so injuriously exposed under ~~such~~ the employer; ~~and the~~. The notice of disability and claim for compensation shall be given and made to ~~such~~ the employer.

Section 58. That § 62-8-17 be amended to read as follows:

62-8-17. ~~In the event~~ If a totally disabled employee ~~shall engage~~ engages in any remunerative work for any other employer, ~~he shall~~ the employee thereby ~~waive~~ waives disability benefits or compensation under this chapter for ~~such~~ the period as ~~he~~ the employee is so engaged.

Section 59. That § 62-8-18 be amended to read as follows:

62-8-18. In case of silicosis, the only employer liable ~~shall be~~ is the last employer in whose

1 employment the employee was last injuriously exposed to the hazards of the disease during a
2 period of sixty days or more ~~after July 1, 1947.~~

3 Section 60. That § 62-8-19 be amended to read as follows:

4 62-8-19. In case of disability or death from silicosis, complicated with tuberculosis of the
5 lungs, compensation ~~shall be~~ is payable as for uncomplicated silicosis, ~~provided, however, that~~
6 if the silicosis was an essential factor in causing ~~such~~ the disability or death.

7 Section 61. That § 62-8-20 be amended to read as follows:

8 62-8-20. Compensation ~~shall~~ is not ~~be~~ payable for partial disability due to silicosis, except
9 as provided in §§ 62-8-24, 62-8-27, and 62-8-28.

10 Section 62. That § 62-8-21 be amended to read as follows:

11 62-8-21. No compensation for death from an occupational disease ~~shall be~~ is payable to any
12 person whose relationship to the deceased, which, under the provisions of this chapter would
13 give right to compensation, arose subsequent to the beginning of the first compensable
14 disability, save only to after-born children of a marriage existing at the beginning of ~~such~~ the
15 disability.

16 Section 63. That § 62-8-22 be amended to read as follows:

17 62-8-22. Notwithstanding anything contained in this chapter, no employee or dependent of
18 any employee, or personal representative of a deceased employee, or other person is entitled to
19 receive compensation for disability or death from an occupational disease if the disability or
20 death, wholly or in part, was caused by the willful misconduct or willful self-exposure of the
21 employee or by ~~his~~ the employee's disobedience to reasonable regulations adopted by the
22 employer, that have been and are kept posted in conspicuous places in and about the premises
23 of the employer, or otherwise brought to the attention of the employee.

24 Section 64. That § 62-8-23 be amended to read as follows:

62-8-23. As used in § 62-8-22, willful self-exposure shall be conclusively presumed ~~where~~
if any of the following occur:

(1) An employee or applicant for employment ~~shall fail~~ fails or ~~omit~~ omits truthfully to state in writing to the best of ~~his~~ the employee's knowledge in answer to any inquiry made by the employer, the place, duration, and nature of ~~his~~ the employee's previous employment;

(2) An applicant for employment ~~shall fail~~ fails or ~~omit~~ omits truthfully to state in writing to the best of ~~his~~ the applicant's knowledge in answer to any inquiry made by the employer, whether or not ~~he~~ the applicant had been previously disabled, laid off, or compensated in damages or otherwise, because of any physical disability;

(3) An employee or applicant for employment ~~shall fail~~ fails or ~~omit~~ omits truthfully to give in writing to the best of ~~his~~ the employee's or applicant's knowledge in answer to any inquiry made by the employer, full information about the previous status of ~~his~~ the employee's or applicant's health, previous medical and hospital attention and exposure to tuberculosis;

(4) An employee or applicant for employment ~~shall fail~~ fails or ~~refuse~~ refuses to submit to medical or X ray examination when requested so to do by the employer at the employer's expense;

(5) An employee ~~shall~~ willfully ~~fail~~ fails to use protective and safety devices provided by the employer.

Section 65. That § 62-8-24 be amended to read as follows:

62-8-24. If an employee, though not actually disabled, has nondisabling silicosis, ~~he~~ the employee may, subject to the approval of the Department of Labor, waive in writing full compensation for any aggravation of ~~his~~ the employee's condition that may result from ~~his~~ the

1 employee continuing in ~~his~~ the hazardous occupation. If the employee later suffers total
2 disablement or death as a result of the disease with which the employee was affected after such
3 a waiver, compensation shall ~~nevertheless~~ be payable as provided in this chapter, ~~but~~. However,
4 the amount of compensation, whether for disability or death or both, may not exceed fifty-two
5 times the maximum weekly benefit rate in effect at the time of total disability or death occurs.
6 A waiver so permitted ~~shall remain~~ remains effective, for the trade, occupation, process, or
7 employment for which executed, notwithstanding ~~a change or changes~~ of employer. The
8 secretary of labor may promulgate rules pursuant to chapter 1-26 relative to the form, execution,
9 filing, or registration, and public inspection of waivers or records thereof.

10 Section 66. That § 62-8-25 be amended to read as follows:

11 62-8-25. A worker, seeking employment and having knowledge or being informed that ~~he~~
12 the worker is affected with a nondisabling silicosis, who nevertheless voluntarily prefers to work
13 in an occupation where ~~his~~ the worker's disease may become aggravated, may, with the approval
14 of the department, enter into a contract with ~~his~~ the worker's prospective employer, waiving all
15 claims for compensation or damages under this chapter or otherwise.

16 Section 67. That § 62-8-26 be amended to read as follows:

17 62-8-26. Before approving a waiver under § 62-8-24 or 62-8-25, the department shall be
18 satisfied that the worker has voluntarily entered into ~~said~~ the agreement to waive compensation;
19 that it is of greater advantage to the worker and ~~his~~ the worker's dependents, if any, for ~~him~~ the
20 worker to work in an occupation where ~~his~~ the worker's disease may become aggravated than
21 to seek other employment, and that the working conditions maintained by the employer are such
22 as to minimize the hazards of silicosis.

23 Section 68. That § 62-8-27 be amended to read as follows:

24 62-8-27. ~~When~~ If an employee working subject to this chapter, who has not previously

1 executed any of the waivers referred to in §§ 62-8-24 to 62-8-26, inclusive, and who would be
2 entitled to compensation under this chapter if disabled, is, because ~~he~~ the employee had a
3 nondisabling silicosis, discharged from employment in which ~~he~~ the employee is engaged, or
4 ~~when such~~ if an employee, after an examination as provided in § 62-8-28 and a finding by the
5 medical panel that it is inadvisable for ~~him~~ the employee to continue in ~~his~~ employment,
6 terminates ~~his~~ employment, the department may allow ~~such~~ the compensation on account of
7 ~~such~~ the discharge or termination of employment as ~~he may deem~~ the department deems just,
8 but in no case to exceed one thousand dollars, which payment shall operate as a complete
9 release and discharge of ~~any and~~ all liability of the employer.

10 Section 69. That § 62-8-28 be amended to read as follows:

11 62-8-28. Any employee who in the course of ~~his~~ employment has been exposed to the
12 inhalation of silica dust and who wishes to submit to examination by the department to
13 determine whether ~~such~~ the employee has silicosis, and the degree thereof, may petition the
14 department for an order directing ~~such~~ the examination. The cost of ~~such~~ the medical
15 examination shall be borne by the employee making application. The department shall submit
16 copies of the report of ~~such~~ the examination to the employer and employee, who shall have
17 opportunity to rebut the same, ~~provided if the~~ request therefor is made to the department within
18 thirty days from the mailing of ~~such~~ the report to the parties. The department shall make its
19 findings as to whether or not it is inadvisable for the employee to continue in ~~his~~ employment.

20 Section 70. That § 62-8-29 be amended to read as follows:

21 62-8-29. Unless written notice of an occupational disease ~~shall be~~ is given by the worker to
22 the employer within six months after the employment has ceased in which it is claimed that the
23 disease was contracted, and, in case of death, unless written notice of such death ~~shall be~~ is
24 given within ninety days after the occurrence, all rights to compensation for disability, or death,

1 from an occupational disease ~~shall be~~ are forever barred.

2 Section 71. That § 62-8-30 be amended to read as follows:

3 62-8-30. Notwithstanding § 62-8-29, the time for filing notice and claims ~~shall~~ does not
4 begin to run in cases of incapacity from exposure to ionizing radiation until one year after the
5 date upon which the employee first suffered incapacity and either knew or in the exercise of
6 reasonable diligence should have known that the occupational disease was caused by ~~his~~ the
7 employee's present or prior employment.

8 Section 72. That § 62-8-31 be amended to read as follows:

9 62-8-31. Notice and claim under § 62-8-29 may be made by any person claiming to be
10 entitled to compensation or by someone in ~~his~~ the person's behalf.

11 Section 73. That § 62-8-32 be amended to read as follows:

12 62-8-32. ~~Where~~ If compensation payments have been made and discontinued, and further
13 compensation is claimed, the claim for ~~such~~ the further compensation shall be made within one
14 year after the last payment.

15 Section 74. That § 62-8-40.1 be amended to read as follows:

16 62-8-40.1. ~~The medical panel created by § 62-8-33 is abolished, and all its functions shall~~
17 ~~be administered by the Department of Labor under the direction and control of the secretary of~~
18 ~~labor. The secretary is authorized to~~ Department of Labor may contract with licensed physicians
19 for medical reports on controverted medical questions in any case on a claim for compensation
20 for an occupational disease.

21 Section 75. That § 62-8-41 be amended to read as follows:

22 62-8-41. Upon the filing of a claim for compensation for death from an occupational disease
23 where an autopsy is necessary accurately and scientifically to ascertain and determine the cause
24 of death, ~~such~~ the autopsy shall be ordered by the department. The department may designate

1 a duly licensed physician, who is a specialist in such examinations, to perform or attend ~~such~~
2 the autopsy, and to certify ~~his~~ the findings thereon. ~~Such~~ The findings shall be filed with the
3 department and ~~shall be~~ are a public record.

4 Section 76. That § 62-8-42 be amended to read as follows:

5 62-8-42. The secretary of the Department of Labor also may exercise such authority on ~~his~~
6 the secretary's own motion or on application made to ~~him~~ the secretary at any time by any party
7 in interest, upon the presentation of facts showing that a controversy may exist in regard to the
8 cause of death or the existence of any occupational disease.

9 Section 77. That § 62-8-43 be amended to read as follows:

10 62-8-43. All proceedings for compensation shall be suspended upon refusal of a claimant
11 or claimants to permit ~~such~~ the autopsy when so ordered, ~~and no.~~ No compensation ~~shall be~~ is
12 payable during the continuance of ~~such~~ the refusal.

13 Section 78. That § 62-8-46 be repealed.

14 ~~— 62-8-46. Nothing in this chapter shall create any liability on the part of any employer where~~
15 ~~disability or death occurred prior to July 1, 1947.~~

16 Section 79. That § 62-8-47 be amended to read as follows:

17 62-8-47. The compensation provided for under this chapter is not in addition to
18 compensation which may be payable under chapter 62-4, and in all cases where injury results
19 by reason of an accident arising out of or in the course of employment and compensation is
20 payable therefor under said chapter 62-4, no compensation under this chapter ~~shall be~~ is payable.

21 Section 80. That § 62-8-48 be repealed.

22 ~~— 62-8-48. This chapter may be cited and shall be known as the "South Dakota Occupational~~
23 ~~Disease Disability Law."~~

24 Section 81. That § 62-9-13 be repealed.

1 ~~62-9-13. Any person who has suffered an occupational hearing loss after July 1, 1974, and~~
2 ~~who has been removed from the injurious exposure for more than six months at July 1, 1986~~
3 ~~must file a claim for compensation with the employer within two years of July 1, 1986. Claims~~
4 ~~not filed within this period are forever barred.~~